**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL NO. 531 of 2004**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA**
**and**
**HONOURABLE MR.JUSTICE J.B.PARDIWALA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMLESH PRABHUDAS TANNA....Appellant(s)

Versus

STATE OF GUJARAT & 1....Opponent(s)/Respondent(s)

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Appearance:
MR PRATIK B BAROT, ADVOCATE for the Appellant(s) No. 1 - 2 *(Amicus curiae)*
MS CHETNA SHAH, ADDITIONAL PUBLIC PROSECUTOR for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA**
and
**HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**Date :31 /07/2014**

**CAV JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

This Criminal Appeal is at the instance of two convicts of

the offence punishable under Sections 304-B, 306 and 498-A read with Section 34 of the Indian Penal Code, and is directed against order of conviction and consequent sentence dated 5th March, 2004, passed by the Additional Sessions Judge, Fast Track Court No.1, Jamnagar, in Sessions Case No. 158 of 2001. By the aforesaid order passed by the learned Additional Sessions Judge, both the accused-appellants have been convicted of the offence punishable under Section 304-B read with Section 34 of the Indian Penal Code, including Section 4 of the Dowry Prohibition Act, and have been sentenced to undergo rigorous imprisonment for a period of seven years with fine of Rs. 1,000/- each. In default of payment of fine, the appellants would undergo further simple imprisonment for one year.

2. The appellants have also been convicted of the offence under Section 306, read with Section 34 of the Indian Penal Code, and have been sentenced to undergo rigorous imprisonment for a period of five years with fine of Rs. 1,000/- each. In default of payment of fine, the appellants would undergo further simple imprisonment for one year.

3. The appellants have also been convicted of the offence punishable under Section 498-A, read with Section 34 of the Indian Penal Code, and have been sentenced to undergo rigorous imprisonment for a period of 18 months, with fine of Rs. 500/- each. In default of payment of fine, the appellants would undergo further simple imprisonment for six months.

4. The appellants have also been convicted for the offence punishable under Section 4 of the Dowry Prohibition Act, and

have been sentenced to undergo rigorous imprisonment for a period of six months and fine of Rs. 250/- each. In default of payment of fine, the appellants would undergo further simple imprisonment for two months.

5. The case of the prosecution may be summarized as under:-

5.1 The appellant No.1 is the husband of the deceased, whereas the appellant No.2 is the mother-in-law of the deceased. The marriage of the deceased with the appellant No.1 was solemnized on 29th April, 1997. In the wedlock, two children were born, a daughter named "Riti", who, at the time of the incident was two years old and a son named "Yash", who, at the time of the incident was seven months old. The deceased was a South Indian lady. Her native place was Mangalore. However, the parents of the deceased had settled in Goa. The accused-appellants are Gujaratis from Jamnagar. It is the case of the prosecution that the deceased, namely, Sandhya was working in the company of the brother-in-law of the accused No.1 at Goa and accordingly, came in contact with the accused No.1. Both fell in love and decided to get married amidst objection on the part of the parents of the deceased. According to the prosecution, after marriage, the accused persons started harassing the deceased as they insisted that the deceased should get Rs. 2 lac from her parents. As the parents of the deceased were unable to arrange for Rs. 2 lac, there was incessant harassment to the deceased at the end of both the accused persons, as a result, the deceased committed suicide by hanging herself.

5.2 It appears from the materials on record that the brother of the deceased, P.W 2 Santosh Chandrashekar Kanan lodged the First Information Report on 30th September, 2001, before the Deputy Superintendent of Police, Jamnagar City, inter-alia stating that he was residing with his parents and a brother. It has been stated that his sister Sandhya had performed love marriage with Kamlesh Prabhudas Tanna, the accused No.1, of Jamnagar on 24th September, 1997, and thereafter, was residing with her husband at Jamnagar. It has been stated that his sister Sandhya committed suicide on 11th September, 2001, at her matrimonial home. The accused No.1 had informed the first informant on telephone that Sandhya had committed suicide. No sooner had the first informant learnt about the incident, than he himself along with his friend Sandilkumar Swamy rushed to Jamnagar. On making enquiry regarding the sudden death of his sister, he was informed by the accused No.1 that Sandhya was tired of life as her children were constantly suffering from fever, diarrhoea and vomiting. The first informant was informed by the accused No.1 that due to such reason, Sandhya strangulated herself with a dupatta in her house and thereby committed suicide. The explanation offered by the accused No.1 was not found convincing and palatable to the first informant, as Sandhya was a lady with strong mind. According to the first informant, Sandhya was not a person who would go to the extent of committing suicide being fed-up with the illness of her children, who, at the relevant point of time, were just two years and seven months respectively of the age. It has been further stated in the F.I.R, Exh. 25 that Sandhya had come to Goa for her first delivery and had stayed for two and a half months. Sandhya gave birth to a girl child at Goa. While Sandhya was at Goa, she had

disclosed before her family members that the accused persons were conveying to her that they had no money to start a business. It has been further stated in the F.I.R that the accused No. 2 used to tell the accused No.1 that his father-in-law was a miser and had failed to give anything to her daughter. At times, the accused No.2 used to directly tell the deceased that at Jamnagar, the daughter-in-laws would come to their matrimonial home with dowry, but her father was a miser. It has also been stated in the F.I.R that it was informed by the deceased that her mother-in-law used to say that the father of the deceased had foisted the deceased upon them as a liability. The deceased also used to complain that although she used to perform all the household works, yet, on one pretext or the other, the mother-in-law used to fight with her and taunt her by saying that the deceased was not able to cook, nor was able to do any domestic household work. The accused No.2 also used to taunt the deceased that her father had not taught anything to her and saying so, used to cause mental trauma. It has been stated in the F.I.R that the deceased had told them that despite complaining before the accused No.1 regarding the harassment caused by the accused No.2 and requesting the accused No.1 to persuade the accused No.2 not to treat the deceased cruelly, yet the accused No.1 did not pay any heed to the request of the deceased and on the contrary, the deceased was instructed by the accused No.1 to act according to the wishes of the accused No.2. It has been stated that they had enquired with Sandhya whether they should come to Jamnagar and reprimand the accused persons of their behaviour, but Sandhya restrained her parents and brother as the nature of the accused No.1 was very bad. Sandhya had also conveyed to her parents and her

brother that if they would reprimand, then they would act more cruelly with her. It has also been stated in the F.I.R that thereafter, quite frequently, Sandhya used to call up from Jamnagar and while inquiring with Sandhya regarding her condition, Sandhya used to convey that the accused No.2 was demanding Rs. 2 lac for business. Sandhya also used to inform her parents and brother that the accused persons desired that she should get Rs. 2 lac from her parental home. However, the accused persons had not directly told the deceased to get the money. According to the first informant, such were the conversation with the deceased on telephone. It has been further stated that one fine day the first informant was very keen to speak to her sister and therefore, had called up on telephone. The telephone was received by the accused No.1 and the accused No.1 was requested to hand over the receiver to Sandhya. However, the accused No.1 had informed the first informant that Sandhya had fallen sick and had been admitted in the hospital past two days as she consumed tea containing a small lizard. The accused No.1 had asked the first informant to call up after two days. After two days, the first informant again called up Sandhya and at that time, Sandhya had informed the first informant that her mother-in-law was not allowing her to live in peace and the accused No.1 husband was maintaining complete silence. It was also informed by Sandhya to the first informant that as a matter of fact, she had consumed poison. However, as she survived and having realized that her two minor children may not have to suffer, she had given a false statement before the Police that she had consumed tea unmindful about the lizard having fallen in the same. Sandhya had also requested the first informant that the entire episode was over and, therefore, the accused persons

need not be told anything about the same. It has been further stated that in 2001, after the devastating earthquake in Gujarat, Sandhya and her two children along with the accused No.2 came down to Goa. The father of Sandhya had gone to the Railway Station to receive them, but the accused No.2 refused to come at their house, and instead went to the house of her daughter, who was married at Goa. It has been further stated that while at Goa, Sandhya had once visited the house of her friend, namely Ujwala (P.W 15) and had also visited the house of Sandilkumar (P.W.20). It has also been stated in the first information report that although the mother-in-law of Sandhya stayed at Goa for two months, yet had refused to come at their house, despite making an earnest request. During the stay at Goa, Sandhya had conveyed to one and all that her mother-in-law and husband were insisting that she must get Rs. 2 lac from her father. However, the brother and parents of Sandhya expressed their inability to arrange for the money. They all consoled the deceased saying that they would arrange for the same within a short period. They had also told Sandhya to convey to her mother-in-law and her husband that money would be paid to them in a short time. After reaching Jamnagar, Sandhya used to call up once in a week and at that time she used to inform her father that the accused persons were behaving very badly and were taunting her. She had also conveyed that the accused persons were insisting that she must call for the money at the earliest. She had also conveyed that if the arrangement for money was not made, then they will make her life more miserable. It has been stated that Sandhya used to tell them that no sooner had the arrangement for money was made, than the same may be sent at the earliest.

5.3 On 9th September, 2001, Sandhya's mother had called up at Jamnagar and at that time, Sandhya started crying and informed that if her children would start crying and if she would start taking care of her children, then her mother-in-law would insist that she should not attend the children and continue with her household work. Sandhya also informed that her mother-in-law would not allow her to take care of her children. It was also conveyed by Sandhya that she was told by the accused persons that if her parents were not able to arrange for the money, then she might have to live the rest of her life at her father's house. She was also told by the accused persons that they would not keep her without any gain. At that time, Sandhya had requested to send at least one lac of rupees. It has been stated in the F.I.R that the accused persons kept on demanding for Rs. 2 lac as dowry, as the accused persons wanted to start a business. The accused persons kept on pressurizing Sandhya and unable to bear the torture and harassment at the end of the accused persons, Sandhya took the extreme step of tying a dupatta with a ceiling fan and strangulated herself, leaving behind her two minor children.

5.4 On the first information being lodged, the investigation had commenced. The inquest panchnama Exh.46 of the dead body of the deceased was drawn in presence of the panch witnesses. The dead body was sent for *postmortem* examination and the *postmortem* report Exh.20 noted that the cause of death was asphyxia on account of hanging. The scene of offence panchnama Exh.61 was drawn in the presence of the panch witnesses. The accused persons were

arrested and the panchnama of their person Exh.63 were drawn. The statements of the witnesses were recorded and ultimately, a charge-sheet against the accused persons was filed in the Court of the learned Judicial Magistrate First Class, Jamnagar. However, as the offence was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions under Section 209 of the Criminal Procedure Code.

6. The prosecution examined the following witnesses in support of its case.

1. PW-1 Dr. Rakhalchandra Gopeshchandra Datt Exh. 19
2. PW-2 Santosh Chandrashekhar Kanan(Complainant) Exh.24
3. PW-3 Prashannjit Rupendrakumar Bhattacharya Exh. 27
4. PW-4 Yogesh Narmadashankar Raval Exh. 28
5. PW-5 Rajubhai Ratilal Exh. 29
6. PW-6 Ashokbhai Ratanshi Jethva Exh. 30
7. PW-7 Karansinh Jilubha Exh. 31
8. PW-8 Chhabil Nanubhai Sangani Exh. 32
9. PW-9 Pranav Jayeshbhai Dave Exh. 33
10. PW-10 Umaben Dharnat Chavda Exh. 34
11. PW-11 Vijaysinh Balvantsinh Jadeja Exh. 36
12. PW-12 Nanduben w/o Nagjibhai Exh. 38
13. PW-13 Chandrashekhar Kanan Exh. 39
14. PW-14 Padmini Chandrashekhar Kanan Exh. 40
15. PW-15 Ujjavala Uttam Exh. 41
16. PW-16 Hitendra Ratilal Kelaiya(ExecutiveMagistrate)Exh.44
17. PW-17 Motilal Pethraj Barot (Head Constable) Exh.48
18. PW-18 Dilipsinh Gatursinh Vaghela (P.I.) Exh. 51

19. PW-19 Pitambar Keshabhai Dabhi (P.S.O.) Exh. 54
20. PW-20 Sandilkumar K.M.K. Swami Exh.58
21. PW-21 Raghubha Prabhatsinh Zala (P.S.I.) Exh.59
22. PW-22 Chhaguji Chaturji Rajput (I.O.) Exh.60

7. The prosecution also produced the following pieces of documentary evidence:-

1. *Postmortem* Note Exh. 20
2. Yadi for PM Note Exh.21
3. Form for *Postmortem* Exh. 22
4. Original complaint Exh. 25
5. Yadi for Inquest Exh.45
6. Inquest panchnama of dead-body Exh. 46
7. Yadi for *Postmortem* Exh. 49
8. Yadi for making entry of accidental death Exh. 52
9. Yadi for registering the offence Exh. 55
10. Copy of Station diary Exh. 56
11. Panchnama of place of incident Exh. 61
12. Panchnama of scissor seized from place of incident Exh.62
13. Panchnama of person of appellant no. 1 Exh. 63
14. Report for adding of Section 306 IPC Exh. 64
15. Letter with statement of muddamal sent to FSL Exh.65
16. Authority Certificate Exh. 66
17. FSL Report Exh. 68
18. Biological report Exh. 70
19. Serological Report Exh. 71
20. Certificate of marriage registration Exh. 72
21. Medical certificate of deceased Exh. 74
22. Panchnama of person of appellant no. 2 Exh. 75

23. Report of the offence Exh. 76

8. The accused persons denied the allegations levelled against them by the evidence adduced by the prosecution under Section 313 of the Code of Criminal Procedure and asserted that they were innocent. The learned Additional Sessions Judge found the appellants guilty, convicted them and consequently, awarded the sentence as stated above.

9. Being dissatisfied, the convicts have come up with the present appeal.

10. At this stage, it may not be out of place to state that the appeal we are dealing with had already been adjudicated by a Division Bench of this Court, and vide judgment and order dated 6th September, 2007, the Division Bench was pleased to dismiss the Criminal Appeal No. 531 of 2004 filed by the appellants herein, i.e. the two convicts, Criminal Appeal No. 1889 of 2004 preferred by the State for the enhancement of the sentence as well as the Criminal Revision Application No. 444 of 2007.

11. Being dissatisfied with the judgment and order passed by the Division Bench of this Court dated 6th September, 2007, the two convicts preferred Criminal Appeal No. 1517 of 2007 before the Honourable Supreme Court. The Supreme Court, vide it's order dated 26th August, 2013, set aside the judgment and order dated 6th September, 2007, passed by the Division Bench of this Court in Criminal Appeal No. 531 of 2004, and remitted the appeal for fresh disposal. The Supreme Court, in paragraph 14 of its order dated 26th

August, 2013, observed as under:-

> "*14. Consequently, the impugned judgment and order passed in Criminal Appeal No. 531 of 2004 by the High Court is set aside and the appeal preferred by the appellants is remitted for fresh disposal. The High Court is requested to dispose of the appeal as expeditiously as possible so that the Sword of Damocles is not kept hanging on the head of the appellants. As the appellants are on bail, they shall continue to remain on bail on the same terms and conditions till the disposal of the appeal by the High Court.*"

12. Consequently, upon remittance of the Criminal Appeal No. 531 of 2004 to this Court for fresh disposal, the appeal came up for hearing before us on 28th April, 2014. When this appeal came up for hearing before us, the appellant No.1 requested that he may be permitted to argue in person. However, as he was not in a position to argue the matter in English, we thought fit to appoint Mr. Pratik Barot, a learned Advocate of this High Court, as *amicus curiae* for assisting us in these matters. On 28th April, 2014, Mr. Barot prayed for some time to prepare himself, and accordingly, we adjourned the hearing of the appeal to 5th May, 2014.

13. <u>Submissions on behalf of the accused appellants:</u>

13.1 Mr. Barot, the learned *Amicus* very strongly submitted before us that the trial Court committed a serious error in finding the accused-appellants guilty of the offence under Sections 304-B, 306, 498-A, read with Section 34 of the

Indian Penal Code and Section 4 of the Dowry Prohibition Act. Mr. Barot submitted that even if the entire case of the prosecution is accepted as true, there is no evidence worth the name to hold the accused-appellants guilty of the offence of dowry death punishable under Section 304-B of the Indian Penal Code. The principal argument of Mr. Barot is that even if we believe that there was a demand at the end of the accused-appellants for Rs. 2 lac to start with a business, it could not be said that such a demand was by way of dowry. According to Mr. Barot, there is no evidence worth the name that at the time of marriage, there were any talks regarding the dowry. After the marriage, if there is any demand for financial assistance with a view to start a business, then such a demand would not constitute demand by way of dowry.

13.2 Mr. Barot further submitted that the basic ingredients to constitute the offence under Section 304-B of the Indian Penal Code are lacking, inasmuch as there is no evidence to indicate that "soon before the death" of Sandhya, she was subjected to cruelty or harassment by the accused persons. Mr. Barot also submitted that if no case is made out so far as the offence under Section 304-B of the Indian Penal Code is concerned, then in such circumstances, the conviction of the accused persons of the offence under Section 306 of the Indian Penal Code also is not sustainable. Mr. Barot in the alternative submitted that if the conviction of the accused persons of the offence under Section 304-B is upheld, then there is no reason to confirm the conviction of the accused persons of the offence under Section 306 of the Indian Penal Code.

13.3 Mr. Barot as *amicus* submitted that at the most it could be said that there was some harassment at the end of the accused persons, which at the best, would constitute an offence under Section 498-A of the Indian Penal Code.

In such circumstances referred to above, Mr. Barot prays that their being merit in the appeal, the same may be allowed.

14. In support of his submissions, Mr. Barot has placed strong reliance on the following decisions of the Supreme Court.

1. Satvir Singh and ors. Vs. State of Punjab - (2001) 8 SCC 633
2. Hira Lal Vs. State (Govt. of NCT) - AIR 2003 SC 2865
3. Kaliya Perumal and anr. Vs. State of Tamil Nadu - 2003-04 Criminal Law Reporter (SC) Suppl. 795
4. Appasaheb and anr. Vs. State of Maharashtra - (2007) 9 SCC 721
5. Modinsab Kasimsab Kanchagar Vs. State of Karnataka AIR 2013 SC 1504
6. Panchanand Mandal alias Panchan Mandal and anr. Vs. State of Jharkhand - (2013) 9 SCC 800
7. Bharat Bhushan Vs. State of M.P - (2013) CCR (Suppl.) 241
8. Bakshish Ram Vs. State of Punjab - (2013) 4 SCC 131
9. Durga Prasad Vs. State of M.P. - (2010) 6 SCALE 18
10. Sureshkumar Singh Vs. State of U.P. - (2009) 7 SCALE 629

15. <u>Submissions on behalf of the State:</u>

15.1 Ms. Chetna Shah, the learned Additional Public Prosecutor appearing on behalf of the State has vehemently opposed the appeal filed by the two convicts and submits that the trial Court committed no error in finding the accused-appellants guilty of the offence punishable under Sections 304-B, 306, 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. Ms. Shah vehemently submits that the evidence of the P.W 2, Santosh Kanan (the brother of the deceased), the P.W 13, Chandrashekhar Kanan (the father of the deceased), the P.W 14, Padmini Kanan (the mother of the deceased), the P.W 15, Ujwala Uttam (the friend of the deceased), the P.W 20, Sandilkumar Swamy (the friend of the deceased) establishes beyond reasonable doubt that the accused persons had made the life of the deceased miserable by constantly asking her to get Rs. 2 lac from her parents, who were residing at Goa. Ms. Shah submits that the demand of Rs. 2 lac, even after marriage, would constitute demand by way of dowry.

15.2 Ms. Shah submits that the marriage of the accused No.1 with the deceased had solemnized on 29th April, 1997, and the deceased committed suicide on 11th September, 2001 i.e. within seven years of the marriage, and there is ample evidence on record to indicate that soon before her death, Sandhya was subjected to cruelty by her husband and mother-in-law in connection with the demand for dowry.

15.3 Ms. Shah submits that the presumption under Section 113-B of the Evidence Act shall be attracted once the prosecution succeeds in proving the circumstances contemplated under Section 304-B of the Indian Penal Code.

According to Ms. Shah, it is mandatory for the Court to draw the inference that the accused-appellants herein had committed the offence of dowry death.

15.4 Ms. Shah, in support of her submissions, has placed reliance on the following decisions of the Supreme Court:-

1. Public Prosecutor, A.P High Court V. T. Basava Punnaiah 1989 Criminal Law Journal 2330
2. Hemchand Vs. State of Haryana - (1994) 6 SCC 727
3. Kans Raj Vs. State of Punjab - (2000) 5 SCC 207
4. State of W.B Vs. Orilal Jaiswal - AIR 1994 SC 1418
5. Gurbachan Singh Vs. Satpal Singh - AIR 1990 SC 209

In such circumstances referred to above, Ms. Shah prays that there being no merit in the appeal filed by the two convicts, the same may be dismissed.

16. Before adverting to the rival submissions canvassed on either side, we propose to look into the oral evidence on record. It appears that the prosecution in course of the trial, examined as many as twenty two witnesses. Most of the witnesses i.e. mainly the panch witnesses have not supported the case of the prosecution and have been declared as hostile witnesses. However, the family members of the deceased who have been examined, have supported the case of the prosecution.

16.1 The P.W 1, Dr. Rakalchandra Gopeshchandra Datt, in his evidence Exh.19 has deposed that on 11th September, 2001, he was on duty as a Medical Officer at the M.P. Shah

Medical College, Department of Forensic Medicine. On that date, a dead body of a lady by name Sandhya was brought for *postmortem* by the City "B" Division Police Officer. Accordingly, the *postmortem* was performed and the *postmortem* examination revealed the following injuries as noted in the column No. 17.

> "3 cm broad ligature mark found on front of the neck, just above the thyroid cartilage. Mark is groove like. On the right side, it passes upwards backwards 5cm below the right and of mandible and 7cm below the tipro left mastoid, upto midline on back- neck on the upper side it passes obliquely upwards and backwards and extend upto a point 4cm below the left angle mandible. From this point upto midline on back, ligature mark is absent. Skin on ligature mark is abraded and black. Ante-mortem injury."

The P.W 1 has deposed that the cause of death was asphyxia due to hanging.

16.2 The P.W 2 Santosh Chandrashekhar Kanan is the brother of the deceased. In his evidence he has reiterated what has been stated by him in the first information report, Exh.25 lodged by him on 13th September, 2001. In his cross-examination, he has deposed that the customs and rituals of his community are quite different with those of the community of the accused persons. In his community, there is no custom of dowry. He has also deposed that at the time of the marriage of Sandhya, no talks had transpired regarding the dowry. He has also deposed that he had no idea whether his parents had informed the accused persons that their financial condition was very ordinary and they would not be able to give anything by way of dowry. The P.W 2 has admitted in his

cross-examination that their financial condition was not such that they would have given something by way of dowry. He has also deposed that the accused persons were also aware that the financial condition of the parents of Sandhya was not sound. He has also deposed that he himself and his parents had opposed the idea of Sandhya getting married with the accused No.1, but Sandhya was quite firm to get married with the accused No.1. Sandhya was also restrained from going to work with a view to see that she did not get married with the accused No.1. However, ultimately, as Sandhya was very firm to get married, the family members of the P.W 2 had discussed about the same and ultimately, Sandhya's marriage was solemnized with the accused No.1. In his cross-examination, the P.W 2 has also deposed that at the time of the engagement, the accused No.1 had gifted a gold ring, a pair of ear-rings, nose-ring, mangalsutra and clothes to Sandhya. The engagement ceremony had taken place according to the customs and rituals of the community of the accused No.1. The P.W 2 has also deposed that at the time of the delivery of the first child i.e. the daughter, they had gifted a gold ring and a gold chain to the first born child. He has deposed that at that time, nothing was gifted to Sandhya or to Kamlesh, the accused No.1. He has deposed that at that time, no talks had taken place with Kamlesh regarding the difficulties faced by Sandhya. He has also deposed that the demand of Rs. 2 lac was made for the first time after about two and a half years from the date of the marriage. Sandhya had a talk about such demand for the first time with her mother. Thereafter, the parents of the P.W 2 had brought to his notice regarding such demand. He has also deposed that he had not spoken to Kamlesh, the accused No.1 or to the mother of Kamlesh, who is

the accused No.2, regarding the demand of Rs. 2 lac. He has deposed that it was the accused No.1 who had informed on telephone about the incident to him and the accused No.1 had also insisted that the P.W 2 should reach Jamnagar at the earliest. He has also deposed that the accused No.1 had asked him to reach by air and accordingly, the P.W 2, along with his friend Sandil, had reached Jamnagar by air. The entire expenses towards the airfare were borne by the brother-in-law of the accused No.1, namely, Rajubhai. He has also deposed that none of his family members had gone to the house of the accused persons for a period of eight months to enquire about the condition of the children of Sandhya. The P.W 2 had requested the Jamnagar Police Station to inform him about the condition of the children of Sandhya. At that time, the Police Officer of the Jamnagar Police Station had informed the P.W 2 that the children were in jail along with the accused persons. He has deposed that even thereafter, none from his house had gone to inquire about the condition of the children. It was the High Court of Gujarat, who had issued notice to him and pursuant to such notice, he had appeared before the High Court and pursuant to the order passed by the High Court, both the children of the deceased were handed over to him from the jail premises. He has deposed that his parents had come to Jamnagar to take custody of the children of Sandhya. He has deposed in his cross-examination that he got telephone connection at his house after a period of six months from the date of the marriage of Sandhya. At the time of death of Sandhya, the P.W 2 had no STD facility in his telephone. He has deposed that all the bills of the STD calls made by him to Sandhya were handed over to the Police. He has deposed that he had no idea as regards the year and the month of the bills.

Nothing substantial could be elicited through the cross-examination of the P.W 2 so as to render his evidence doubtful in any manner. The P.W 2 has denied the suggestion given to him in his cross-examination that Sandhya at no point of time, had disclosed anything to him or to his family members regarding any harassment or cruelty at the end of the accused persons. He also denied the suggestion given to him that Sandhya, at no point of time, had any direct talks with the P.W 2 regarding the harassment. He has denied in his cross-examination on behalf of the accused No.2 to the suggestion given to him that at the time of Sandhya's second delivery, Sandhya had told that her mother-in-law was not taking care of her children and on her own had to take care, and frequently her mother-in-law used to taunt her.

16.3 The P.W 13, Chandrashekhar Kanan is the father of the deceased. In his evidence Exh.39, he has deposed that the first delivery of Sandhya was at Goa and at that time Sandhya had stayed at her parental home for a period of about three months. At that point of time, Sandhya had conveyed to her mother that the accused persons were harassing her to a little extent. Sandhya had told at that time that her husband and mother-in-law were harassing her for dowry and money. The P.W 13 has deposed that after Sandhya left for Jamnagar along with her first child, they used to talk to her on telephone and at that time, Sandhya used to convey that the accused persons were harassing her for money. The second child was delivered at Jamnagar and therafter, the harassment for money became incessant. The P.W 13 has deposed that due to earthquake in January 2001, Sandhya along with both her children had come

down to Goa and stayed at her parental home for a period of one and a half month. At that time also, Sandhya had told her mother that the accused persons were harassing her for money and her husband refused to talk with her, and quite frequently used to shout at Sandhya. The P.W 13 has also deposed that Sandhya used to tell them that her mother-in-law used to frequently taunt her by saying that she was not able to do any work and her parents had not taught her anything. However, Sandhya had told her mother not to talk anything regarding the same with the accused No.1, otherwise he would get more angry. The P.W 13 has also deposed that once Sandhya was hospitalized as she had fallen sick after drinking tea. This fact was disclosed by his son i.e. the P.W 13. The son of the P.W 13, namely, Santosh had told him that Sandhya had added poison in the tea. Thereafter also, quite frequently Sandhya used to call up the P.W 13 and his family members. She used to inquire whether any arrangement for money was made or not, and the P.W 13 used to reply that he was not able to arrange for money, but he would still try. The P.W 13 has deposed that his sister-in-law, namely, Rashmiben, residing at Bahrain was also requested to send some money. Rashmiben in turn replied that the accused persons were pretending to be very rich, then how come they are in need of money. Rashmiben also refused to help them, but had informed that some gold was lying at her village and that they should pawn the gold and get the money. However, such arrangement also could not be made. He has deposed that the accused No.2, after two months, had inquired by calling up his wife i.e. the mother of the deceased, enquiring regarding money. He has deposed that on 11th September, 2001, they had received a phone call from Kamlesh (A/1) informing that Sandhya had

committed suicide. Thereafter, his son Santosh and his friend Sandil had reached Jamnagar. The P.W 13 had also sent a fax to the D.S.P, Jamnagar, Exh.26. In his cross-examination, he has deposed that he had no idea whether there was any custom of giving dowry in the community of the accused persons. He has deposed that at the time of Sandhya's marriage, they had made it clear before the accused persons that their financial condition was not good and at that time, the accused persons had told them that they did not wanted anything. He has deposed that after Sandhya conveyed to them regarding demand of dowry, he had not discussed anything regarding the same with the sister and brother-in-law of Kamlesh, who were residing at Goa. He has deposed that in his Police statement, he had not stated that the accused No.2 had called up after two months and had enquired with his wife regarding arrangement for money.

16.4 The P.W 14, Padmini Kanan is the mother of the deceased. In her evidence Exh.14, she has deposed that after the marriage of Sandhya, Sandhya used to talk to them on telephone. Once Sandhya had informed her that her husband is in need of Rs. 2 lac for business and the same may be arranged anyhow. She had informed that at least Rs. 1 lac may be arranged. At that point of time, the P.W 14 had informed Sandhya that they would make all efforts to arrange for the money, but they had no money to be given immediately. She has deposed that she had requested her sister Rashmi to help her and her sister had asked her to pawn some gold, which was kept at her village. Thereafter, for four to five times, Sandhya had called up her mother inquiring about the arrangement for the money. She has deposed that

lastly, on 4th, Sandhya had called up the P.W 14 asking her whether any arrangements could be made for the money or not, as she was in a lot of difficulty and saying so, Sandhya disconnected the telephone line. She has deposed that Sandhya used to convey on telephone that her mother-in-law used to frequently get angry on her and also used to hurl abuses. She has deposed that lastly, the accused No.2 had called her up and had spoken to her that Sandhya was asking for money and whether any arrangements could be made for the same or not. In reply, the P.W 14 had conveyed that they had no money with them, but still attempts were being made to arrange for the same. The P.W 14 has also deposed that after the earthquake when Sandhya and her two children came to Goa, at that time also she had stated that her mother-in-law was harassing her and used to get angry. Sandhya had also stated about the demand for money. In her cross-examination, she has deposed that after the second delivery also, Sandhya had informed that they had no money in the house and Kamlesh was inclined to start a business. The P.W 14 had inquired with Sandhya regarding the type of business Kamlesh wanted to start and it was informed by Sandhya that Kamlesh wanted to do the business of contract. At that time also, the P.W 14 had conveyed to Sandhya that they had no money, but would try to arrange for the same. Sandhya had again talked with the P.W 14 on 4th September, however, the P.W 14 was not able to recollect the year. At that time also Sandhya had inquired with her mother whether any arrangements could be made for the money or not because she was in lot of difficulty. She has deposed that at no point of time, Sandhya had said that she did not want to stay at Jamnagar and that arrangements should be made to bring her to Goa. On all

occasions, Sandhya had left for Jamnagar from Goa of her own free will and volition. After the phone call of 4th September, the P.W 14 and her family members were able to arrange for Rs. 50,000/- but were unable to convey the same to Sandhya on phone. She has deposed that at the time of Sandhya's marriage, there were no talks regarding giving of any money. She has deposed that at the time of Sandhya's marriage or even thereafter, the accused persons had not demanded any dowry. In her cross-examination on behalf of the accused No.2, she has deposed that it was true that in her Police statement she had not stated that lastly on 4th September, Sandhya had called up inquiring whether any arrangements could be made for the money or not.

16.5 The P.W 15, Ujjwala Uttam has been examined by the prosecution as one of the friends of the deceased. In her evidence Exh. 41, she has deposed that she was residing at Goa and was working with Verna Industries. Sandhya was her classmate in the school. She has deposed that Sandhya was a very close friend and they used to visit the house of each other. She has deposed that Sandhya was working as a typist in a unit by name Pooja Marbles. The accused No.1 used to visit the industry from Jamnagar. Sandhya had introduced Kamlesh to the P.W 15. She has deposed that due to harassment at the end of Kamlesh, Sandhya had stopped going to work. She has deposed that during her visit to Goa for first delivery, Sandhya had conveyed to her the harassment at the end of the mother-in-law and had also told her that she was being taunted as she was not able to get anything in dowry at the time of her marriage. She has deposed that the accused No.2 used to convey not direct to Sandhya, but if

anybody would visit the house of the accused No.2, then while talking with that person, indirectly a message would be conveyed to Sandhya. She has also deposed that when Sandhya visited Goa for the second time after the earthquake, at that time also she had conveyed that Kamlesh was in need of money to start a business. Sandhya had also conveyed to the P.W 15 that once she had attempted to commit suicide by consuming poison, be she was instructed by Kamlesh to state that she had fallen sick after consuming tea containing a lizard. Sandhya had also conveyed to the P.W 15 that Kamlesh used to tell her that she should act according to the wishes of her mother-in-law and should get the money.

16.6 The P.W 20, Sandilkumar Swamy has also been examined as one of the friends of the deceased. This witness in his evidence Exh58 has also deposed regarding the harassment. This witness has also deposed regarding the talks with Sandhya about harassment caused to her by her husband and her mother-in-law. The P.W 20 has deposed that once he had called Sandhya at his house and in the car he had inquired with Sandhya whether her marital life was happy or not. At that time it was conveyed by Sandhya to the P.W 20 that initially everything was fine, but thereafter the accused persons started demanding for dowry. The P.W 20 has also deposed that Santosh, the brother of the deceased had requested him to lend him Rs. 50,000/- in April, 2001. However, Sandhya had not requested the P.W 20 for any money and the P.W 20 had not lent any amount to the brother of the deceased.

17. Discussion:

Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our determination in the appeal filed by the two convicts is whether the trial Court committed any error in holding them guilty of the offence under Sections 304-B, 306, 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

18. Section 304-B of the Indian Penal Code reads as under:-

> "304-B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
>
> Explanation.- For the purpose of this sub-section, 7 "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
>
> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

A legal fiction has been created in the said provision to the effect that in the event it is established that "soon before the death", the deceased was subjected to cruelty or harassment by her husband or any of his relative; for or in connection with any demand of dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. The Parliament has also inserted Section 113 B of the Indian Evidence Act by Act No.43 of 1986 with effect from 1.5.1986 which reads as under :-

"113.B- Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death", shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)."

19. From a conjoint reading of Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act, it will be apparent that a presumption arising thereunder will operate if the prosecution is able to establish the circumstances as set out in Section 304-B of the Indian Penal Code.

It will be appropriate to take note of what is meant by expression "Dowry". The definition of "Dowry" under Dowry

Prohibition Act is as follows:-

"In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly --

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation II - The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860)".

20. In the case of unnatural death of a married woman as in a case of this nature, the husband could be prosecuted under Section 302, Section 304-B and Section 306 of the Indian Penal Code. The distinction as regards commission of an offence under one or the other provisions as mentioned hereinbefore came up for consideration before a Division Bench of the Supreme Court in Satvir Singh & Ors. v. State of Punjab and another, [(2001) 8 SCC 633], wherein it was held :

> "*Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The*

*third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.*

*It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened "soon before her death." The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is vide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death"."*

21. Yet again in Hira Lal and Others v. State (Govt. of NCT ) Delhi, [(2003) 8 SCC 80], the Supreme Court observed that "The expression "soon before her death" used in the

substantive Section 304-B Indian Penal Code and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods "soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their "possession". The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

22. In Ashok Kumar Vs. State of Haryana, reported in (2010) 12 SCC 350, the Supreme Court in paragraphs 19, 20, 21 and 23 has observed as under:-

> *“19. We have already referred to the provisions of Section 304-B of the Code and the most significant expression used in the section is “soon before her death”. In our view, the expression “soon before her death” cannot be given a restricted or a narrower meaning. They must be understood in their plain language and with reference to their meaning in common*

*parlance. These are the provisions relating to human behaviour and, therefore, cannot be given such a narrower meaning, which would defeat the very purpose of the provisions of the Act. Of course, these are penal provisions and must receive strict construction. But, even the rule of strict construction requires that the provisions have to be read in conjunction with other relevant provisions and scheme of the Act. Further, the interpretation given should be one which would avoid absurd results on the one hand and would further the object and cause of the law so enacted on the other.*

*20. We are of the considered view that the concept of reasonable time is the best criteria to be applied for appreciation and examination of such cases. This Court in Tarsem Singh v. State of Punjab, held that the legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, has been the aftermath of such cruelty or harassment. In other words, there should be a reasonable, if not direct, nexus between her death and the dowryrelated cruelty or harassment inflicted on her.*

*21. Similar view was expressed by this Court in Yashoda v. State of M.P., where this Court stated that determination of the period would depend on the facts and circumstances of a*
*given case. However, the expression would normally imply that there has to be reasonable time gap between the cruelty inflicted and the death in question. If this is so, the legislature in its wisdom would have specified any period which would attract the provisions of this section. However, there must be existence of proximate link between the acts of cruelty along with the demand of dowry and the death of the victim. For want of any specific period, the concept of reasonable period would be applicable. Thus, the cruelty, harassment and demand of dowry should not be so ancient, whereafter, the couple and the family members have lived happily and that it would result in abuse of the said protection. Such demand or harassment may not strictly and squarely fall within the scope of these provisions unless definite evidence was led to show to the contrary. These matters, of course, will have to be examined on the facts and circumstances of a given case.*

*23. The Court cannot ignore one of the cardinal principles of criminal jurisprudence that a suspect in the Indian law is entitled to the protection of Article 20 of the Constitution of India as well as has a presumption of innocence in his favour. In other words, the rule of law requires a person to be innocent till proved guilty. The concept of deeming fiction is hardly applicable to the criminal jurisprudence. In contradistinction to this aspect, the legislature has applied the concept of deeming fiction to the provisions of Section 304-B. Where other ingredients of Section 304-B are satisfied, in that event, the husband or all relatives shall be deemed to have caused her death. In other words, the offence shall be deemed to have been committed by fiction of law. Once the prosecution proves its case with regard to the basic ingredients of Section 304- B, the Court will presume by deemed fiction of law that the husband or the relatives complained of, has caused her death. Such a presumption can be drawn by the Court keeping in view the evidence produced by the prosecution in support of the substantive charge under Section 304-B of the Code.*

23. The following principles are discernible from the above decisions:-

(a) To attract the provisions of Section 304B IPC the main ingredient of the offence to be established is that soon before the death of the deceased she was subjected to cruelty and harassment in connection with the demand of dowry.

(b) The death of the deceased woman was caused by any burn or bodily injury or some other circumstance which was not normal.

(c) Such death occurs within seven years from the date of

her marriage.

(d) That the victim was subjected to cruelty or harassment by her husband or any relative of her husband.

(e) Such cruelty or harassment should be for or in connection with demand of dowry.

(f) It should be established that such cruelty and harassment was made soon before her death.

(g) The expression (soon before) is a relative term and it would depend upon circumstances of each case and no straight jacket formula can be laid down as to what would constitute a period of soon before the occurrence.

(h) It would be hazardous to indicate any fixed period and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act.

(i) Therefore, the expression “soon before” would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate or life link between the effect of cruelty based on dowry demand and the concerned death. In other words, it should not be remote in point of time and thereby make it a stale one.

(j) However, the expression “soon before” should not be given a narrow meaning which would otherwise defeat the very purpose of the provisions of the Act and should not lead to absurd results.

(k) Section 304B is an exception to the cardinal principles of criminal jurisprudence that a suspect in the Indian Law is entitled to the protection of Article 20 of the Constitution, as well as, a presumption of innocence in his favour. The concept of deeming fiction is hardly applicable to criminal jurisprudence but in contradistinction to this aspect of criminal law, the legislature applied the concept of deeming fiction to the provisions of Section 304B.

(l) Such deeming fiction resulting in a presumption is, however, a rebuttable presumption and the husband and his relatives, can, by leading their defence prove that the ingredients of Section 304B were not satisfied.

(m) The specific significance to be attached is to the time of the alleged cruelty and harassment to which the victim was subjected to, the time of her death and whether the alleged demand of dowry was in connection with the marriage. Once the said ingredients were satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence.[*See Kashmir Kaur and anr. Vs. State of Punjab, reported in 2013 Criminal Law Journal 689 (1)]*

24. Keeping the above principles in mind, when we examine the case on hand, we find the following uncontroverted facts:-

1. The death of the deceased occurred within four years of her marriage with the accused No.1, thereby the main condition prescribed under Section 304-B of the IPC, namely, within seven years of the marriage was fulfilled.

2. The death of the deceased was not normal as evidenced by the version of the P.W 1 Dr. Rakalchandra G. Datt, who had performed the *postmortem*. The *postmortem* report Ex.20 makes it clear that the cause of death was asphyxia due to hanging.

3. The evidence of the P.W 2, the brother of the deceased, P.W 13, the father of the deceased, P.W 14, the mother of the deceased, P.W 15, the friend of the deceased and P.W 20, the other friend of the deceased, disclose that there was a demand for Rs. 2 lac as accused persons wanted to start a business.

25. The picture that emerges on cumulative assessment of the materials on record is that the deceased was hailing from Karnataka, whereas the accused persons are Gujaratis hailing from Jamnagar. It appears that the native place of the deceased was Mangalore, but the parents had settled in Goa. The father and the brother of the deceased were in the business of spray painting. The deceased was working in one of the industrial units at Goa. The accused No.1 used to visit Goa as his sister was married and settled at Goa. The

deceased came in contact with the accused No.1 and both fell in love and decided to get married amidst opposition from the family of the deceased. It may be true as borne out from the evidence on record that at the time of the marriage, there was no demand for dowry. It is only after the birth of the first child that the accused persons started harassing the deceased, as they constantly coerced her to get Rs.2 lac from her parents, on a pretext that the accused No.1 wanted to start a business. The evidence on record admits of no doubt that there was a demand at the end of the accused persons for Rs. 2 lac and for that there was lot of pressure on the deceased at the end of the accused persons. We do not find any good reason to disbelieve the evidence of the brother, the father, the mother and the two friends of the deceased. However, according to Mr.Barot, such demand of Rs.2 lac by the accused persons for the purpose of business would not fall within the ambit of dowry. According to Mr. Barot, before the marriage or even at the time of the marriage, nothing regarding the dowry was discussed and as deposed by the witnesses, there was no demand at the end of the accused persons. However, at a later stage even if the accused persons demanded a sum of Rs. 2 lac for the purpose of business, then such demand could not be termed as a demand by way of dowry.

26. The expression 'dowry' is defined by Section 2 of the Dowry Prohibition Act, 1961, as meaning anything which is given either directly or indirectly, by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person to either party to the marriage of to any other person" at or before or after the marriage as consideration for the marriage of the said parties.

The Act has been amended by Act 63 of 1984 and Act 43 of 1986. Formerly dowry was defined as property given as consideration for the marriage but the words "as consideration for the marriage" have been omitted and substituted by the words "in connection with the marriage". Now dowry means any property given or agreed to be given by the parents of a party to the marriage at marriage or before marriage or at any time after marriage in connection with the marriage.

27. Considering the definition of dowry their Lordships of Supreme Court in Reema Aggarwal v. Anupam (2004) 3 SCC 199 : (2004 Cri LJ 892), indicated thus (para 14):-

> "*The definition of the term "dowry" under Section 2 of the Dowry Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become "dowry" punishable under the Dowry Act. Property or valuable security so as to constitute "dowry" within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage.*"

28. The word "agreement" referred in Section 2 has also been considered in Pawan Kumar v. State of Haryana (1998) 3 SCC 309 : (1998 Cri LJ 1144) by their Lordships of Supreme Court and it was observed as under (para 16) :-

> "*Demand for dowry neither conceives nor would conceive of any agreement. The word "agreement" referred to in Section 2 of the Dowry Prohibition Act, 1961 has to be referred on the facts and circumstances of each case. The interpretation that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry"*

*definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference when persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B, IPC. It is not always necessary that there be any agreement for dowry.*"

29. In the case on hand, the evidence which has been found acceptable by the trial Court against the appellants is that the cruel treatment and harassment of the deceased by the appellants led her to commit suicide, which was a death "otherwise than under normal circumstances". The issue is no longer *res-integra* that even if the deceased had committed suicide by hanging, still the death comes within the scope of Section 304-B of the IPC, if it is shown that she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry. [*See Public Prosecutor, High Court of Andhra Pradesh, Hyderabad Vs. Tota Basava Punnaiah and ors. - 1989 Criminal Law Journal 2230].*

30. The prosecution has been able to establish from the oral evidence on record that there was persistent demand at the end of the accused-appellants of Rs. 2 lac from the deceased and her parents. Since the deceased and her parents were unable to meet with such demand, the life of the deceased was made miserable by the accused-appellants. Thus, the demand made by the accused persons could be said to have fallen

within the ambit of "dowry" since it had touched the roots of the marriage. In not fulfilling the demand would mean destruction of the marital relations. Marriage results in relationship. It is by virtue of marriage that the deceased became wife of the accused No.1 and daughter-in-law of the accused No.2. But for the relationship due to marriage, the accused persons could not have made the demand of Rs. 2 lac. Thus, they exploited the relationship, which was the result of a lawful marriage between the accused No.1 and the deceased. The witnesses have deposed that it was conveyed by the deceased to them that the accused persons had made it very clear that if the deceased or her parents were unable to meet with the demand, then probably the deceased might have to stay at her parental home for the rest of her life with her children. Since demand for dowry does not conceive of any agreement, we are of the view that if persistent demand is made for money from the bride or her parents after the marriage, for the purpose of business, it would constitute to be in connection with the marriage and it would be a case of demand of dowry. It was neither related to customary payment or to other ceremonies prevalent in the society. Any demand of money, property or valuable security made from the bride or her parents or other relatives or the bride groom or his parents or other relatives, or vice-versa, would fall within the mischief of "dowry" under the Act, where such demand is not properly referable to legally recognized claim and relatable only to the consideration of the marriage.

The expressions 'or any time after marriage' and 'in connection with the marriage of the said parties' were introduced by amending Act 63 of 1984 and Act 43 of 1986

with effect from 02.10.1985 and 19.11.1986 respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression 'in connection with the marriage' cannot be given a restricted or a narrower meaning. The expression 'in connection with the marriage' even in common parlance and on its plain language has to be understood generally. The object being that everything, which is offending at any time i.e. at, before or after the marriage, would be covered under this definition, but the demand of dowry has to be 'in connection with the marriage' and not so customary that it would not attract, on the face of it, the provisions of this section [*See Ashok Kumar Vs. State of Haryana - 2010 Cri.L.J. 4402(1)].*

31. To oppose the aforenoted view, Mr. Barot has placed strong reliance on the decision of the Supreme Court in the case of Appasaheb Vs. State of Maharashtra, reported in (2007) 9 SCC 721. In the said case, the case of the prosecution was that Bhimabai (deceased) had ended her life by consuming poison because of the harassment caused to her by the appellants for or in connection with demand of dowry. The main witnesses in the said case were the father and the mother of the deceased Bhimabai. The evidence in the said case was that whenever Bhimabai used to come to her parental home, she used to complain that she was being subjected to harassment by the appellants on account of some domestic reasons and further that her husband had told her that while coming back from her parental home, she should

bring Rs. 1,000/- to 1,200/- for the expenses and for manure, as he had no sufficient money. The Supreme Court in the facts of that case observed that accepting the statements of the father and the mother on their face value, the utmost which could be held was that the husband had asked his wife Bhimabai to bring money for meeting domestic expenses and for purchasing manure. After recording such finding, the Supreme Court proceeded further to consider the necessary ingredients of Section 304-B Indian Penal Code and held that a demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure could not be termed as a 'demand for dowry', as the said word was normally understood. The Supreme Court in the facts of that case took the view that the evidence adduced by the prosecution did not show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the accused persons of that case as, what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. The Supreme Court, accordingly, allowed the appeal and set aside the conviction of the appellants of that case under Section 304-B Indian Penal Code. In the case before the Supreme Court, the accused persons were also charged under Sections 498-A and 306 of the Indian Penal Code read with Section 34 of the Indian Penal Code, but were acquitted of the said charges by the Sessions Judge, which order had attained finality for the reason that the State had not preferred any appeal against the same. In such circumstances, the Supreme Court took the view that it refrained from expressing any opinion as to whether the appellants of that case could be held guilty of having committed the offence under Section 498-A or 306 Indian

Penal Code on the basis of the evidence available on record, as their acquittal under the aforesaid charges had attained finality and could not be reversed in the appeal filed by the appellants challenging their conviction under Section 304-B of the Indian Penal Code.

32. Taking a clue from some of the observations made by the Supreme Court in Appasaheb *(supra)*, Mr. Barot very strenuously tried to convince us that in the present case also, the demand was to arrange for Rs. 2 lac, as the accused persons wanted to start a business, and considering the nature of the demand, it could not be said that the same was towards dowry. Mr. Barot submitted that if the ratio as propounded by the Supreme Court in the case of Appasaheb *(supra)* is made applicable to the facts of the present case, then there is no escape from the fact that the conviction of the accused persons of the offence under Section 304-B of the Indian Penal Code is not tenable in law.

33. We are afraid, we are unable to accept the vociferous contention of Mr. Barot for more than one reason. As discussed above, in the present case there is cogent and convincing evidence to indicate that there was lot of pressure and incessant harassment at the end of the accused persons towards the deceased to procure Rs. 2 lac from the parents of the deceased. It appears that in the past also the deceased had attempted to commit suicide by consuming poison, but at the last minute, the accused No.1 was able to convince the deceased to put forward a story that she had fallen ill due to consumption of tea which contained a lizard. After the commission of suicide, the explanation given by the accused

No.1 was that his wife committed suicide, as she was tired with life due to sickness of her children. The explanation, on the face of it, is not only absurd, but palpably false. A young lady within four years of her marriage and that too a love marriage, was forced to put an end to her life leaving behind two minor children, one aged two years and the other just seven months old. No mother would kill herself for a petty reason as sought to be assigned by the accused No.1, knowing fully well that the second child was just seven months old.

34. The decision of the Supreme Court in the case of Appasaheb *(supra)* has been well explained by the Supreme Court in subsequent two decisions, (1) Bachni Devi and anr. Vs. State of Haryana, reported in 2011 Criminal Law Journal 1634 and (2) Kulwant Singh and ors. Vs. State of Punjab, reported in 2013 Criminal Law Journal 2199.

35. In Bachni Devi *(supra)*, the contention before the Supreme Court was that the demand of motorcycle for the purpose of the business did not qualify as "demand for dowry", therefore, no offence under Section 304-B Indian Penal Code could be said to have been made out against the appellant. In Bachni Devi *(supra)*, strong reliance was placed upon the decision in the case of Appasaheb *(supra)*. The Supreme Court negatived the contention canvassed on behalf of the appellants and made the following observations, which are worth noting.

> *“A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally*

*understood".*

"*The above observations of this Court must be understood in the context of the case. That was a case wherein the prosecution evidence did not show 'any demand for dowry' as defined in Section 2 of the 1961 Act. The allegation to the effect that the deceased was asked to bring money for domestic expenses and for purchasing manure in the facts of the case was not found sufficient to be covered by the 'demand for dowry'. Appasaheb cannot be read to be laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as 'demand for dowry'. It was in the facts of the case that it was held so. If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute 'demand for dowry'; the cause or reason for such demand being immaterial.*"

36. In Kulwant Singh *(supra)*, the case of the prosecution was that although the appellants were given a buffalo and Rs. 6,000/- in cash over and above the dowry given at the time of the marriage, yet, the appellants still complained that the dowry was insufficient. In Kulwant Singh *(supra)* also, the decision of the Supreme Court in the case of Appasaheb and anr. (*supra*) was pressed into service. The Supreme Court negatived the contention by making the following observations, which are worth noting.

"*36. Learned counsel for the appellants referred to Appasaheb & Anr. v. State of Maharashtra, (2007) 9 SCC 721 wherein it was held that asking the wife to bring money for meeting domestic expenses on account of financial stringency and for purchasing manure cannot be held as a demand for dowry. We are unable to see how this decision has any relevance to the facts of the present case or to the controversy that we are concerned with. In any event, the observations made in Appasaheb were explained in Bachni Devi v. State of Haryana,*

*(2011) 4 SCC 427 wherein it was held that the observations in Appasaheb were required to be understood in the context of the case. It was held that Appasaheb cannot be read as laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as a demand for dowry.*"

37. Thus, from the above it could be said that although there was no demand for dowry before the marriage or even during the marriage, yet after the marriage, there was demand of Rs. 2 lac by the accused persons from the deceased and for that purpose she was treated cruelly. It is not in dispute that the deceased committed suicide by hanging herself in the house with a dupatta and at the same time, it is also not in dispute that the deceased died within four years from the date of the marriage. The explanation to Section 304-B of the Indian Penal Code says that the word "dowry" used in the sub-section (a) shall have the same meaning as "dowry" in Section 2 of the Dowry Prohibition Act. In fact, sub-section (a) of Section 304-B of the Indian Penal Code is the definition of dowry death and the presumption goes against the accused or the relatives for such dowry death of the women, if it was within seven years of the marriage. Section 113-A of the Evidence Act is a presumption as to the abetment of suicide by a married woman against the husband or the relatives of her husband, if such commission of suicide was within seven years of her marriage. Section 113-B of the evidence Act refers to the presumption regarding the dowry death, which can be raised against the husband or his relatives that soon before her death, she was subjected to cruelty and harassment in connection with demand for dowry. Therefore, the criterion for

establishing the offence either punishable under Section 306 or Section 304-B of the Indian Penal Code would be the cruelty, as defined and explained under Section 498-A of the Indian Penal Code. Depending upon the cause or the reason for such cruelty, the presumption as contemplated either under Section 113A or under Section 113-B of the Evidence Act would come to the assistance of the prosecution. Whenever the Court is confronted with a case either under Section 306 or under Section 304-B Indian Penal Code and if it comes to the conclusion that such unnatural death was within seven years of marriage, it must inquire as to what was the cause or reason for such cruelty, which ultimately resulted in the unnatural death of the deceased. Depending on the facts brought on record, it should take support from the presumption available under the Evidence Act.

38. It is also well settled that although the initial presumption comes to the aid of the prosecution, yet the prosecution is not absolved of its primary duty or liability, or to put it in other words, the initial burden to establish the charges levelled against the accused persons beyond the reasonable doubt. Having regard to the peculiar nature of the offence and the circumstances under which such unnatural death can occur, the legislature thought fit to introduce an initial presumption to assist the prosecution by way of amendment. This would suggest that the husband or the relatives within whose knowledge such unnatural death has occurred, must be able to explain how such death has occurred or what exactly was the cause for such death. It is equally true that the accused is not expected to establish its defence beyond reasonable doubt. In other words, it should be an explanation which could cause a

dent in the evidence of the prosecution and it should be a reasonable one or it should be a reason acceptable to any reasonable and prudent mind.

39. As discussed above, the explanation of the accused No.1 i.e. the husband of the deceased is not only unreasonable, but palpably false. The trial court has rightly drawn the presumption under Section 113-B of the Evidence Act that the appellants had caused the dowry death of the deceased within the meaning of Section 304-B of the IPC and the appellants were required to rebut this presumption that they had caused the dowry death. The appellants have not made any attempts to rebut this presumption in their statements recorded under Section 313 of the Criminal Procedure Code. After the incident, it appears that the accused No.1 gave a report to the Police, Exh. 52, as contemplated under Section 174 of the Criminal Procedure Code, that his wife committed suicide as she was tired of her life. In the report Exh. 52 it has been stated by the accused No.1 that past four to five days, his children were not well and while taking care of the children, his wife had got tired. We are absolutely not convinced with such explanation of the accused No.1. The explanation is something unpalatable and shocking.

40. In the aforesaid context, we may quote with profit the observations made by the Supreme Court in the case of Pathan Hussain Basha Vs. State of Andhra Pradesh, reported in 2012 Criminal Law Journal 4230.

> "*.....By a deeming fiction in law, the onus shifts on to the accused to prove as to how the deceased died. It is*

*for the accused to show that the death of the deceased did not result from any cruelty or demand of dowry by the accused persons. The accused did not care to explain as to how the death of his wife occurred. Denial cannot be treated to be the discharge of onus. Onus has to be discharged by leading proper and cogent evidence. It was expected of the accused to explain as to how and why his wife died, as well as his conduct immediately prior and subsequent to the death of the deceased. Maintaining silence cannot be equated to discharge of onus by the accused. In the present case, the prosecution by reliable and cogent evidence has established the guilt of the accused. There being no rebuttal thereto, there is no occasion to interfere in the judgments of the courts under appeal.*"

41. Mr. Barot further submitted that one of the most important ingredients to constitute the offence under Section 304-B of the Indian Penal Code is that it must be shown by some cogent and reliable evidence that soon before the death of a woman, she was subjected to cruelty or harassment by her husband or any relative of her husband or for in connection with any demand for dowry. The sum and substance of Mr. Barot's submission is that assuming for the moment that there was a demand of Rs. 2 lac and for such purpose there was some harassment to the deceased at the end of the accused persons, yet there is no evidence to even remotely suggest that soon before her death she was subjected to cruelty or harassment by the accused persons.

42. The phrase "soon before her death" has been well explained by the Supreme Court in the case of Hiralal *(supra)* as noted above. As observed by the Supreme Court in the case of Satvir Singh and ors. Vs. State of Punjab, reported in

(2001) 8 SCC 633, the said phrase, no doubt, is an elastic expression and can be referred to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide, the Court would be in a position to gauge that in all probabilities, the harassment or cruelty would not have been the immediate cause of her death. It is therefore, for the Court to decide on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

43. In the present case, we are of the view that the harassment continued till the last as is evident from the evidence of the P.W 2, the brother of the deceased, P.W 13, the father of the deceased, P.W 14, the mother of the deceased. The mother of the deceased, in her evidence has deposed that Sandhya had spoken to her on 4th September, and at that time, she had enquired regarding the arrangement for money, if made any. The P.W 14 has also deposed regarding a phone call received by her from the accused No.2, inquiring about the money. However, she has admitted that such fact could not be stated in her Police statement. Thus, according to the defence, it is a contradiction in the form of an

omission, which renders the evidence of the P.W 14, the mother of the deceased, doubtful. Even if we ignore that part of the evidence of the P.W 14, there is ample evidence to reach to the conclusion that the harassment was incessant and continued till the last. However, we are not impressed by the submission of Mr. Barot regarding the contradiction in the form of material omission. It is true that an important contradiction in the form of an omission is a relevant fact within the meaning of Section 8 of the Evidence Act, but at the same time, it is also the duty of the Court to see whether the omission is of such a nature that the entire evidence of that witness should be discarded. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the Police statement by itself would not necessarily render the testimony of the witness unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his or her earlier statements, the case of the prosecution becomes doubtful and not otherwise. However, the question we need to answer is that is it an omission in the form of a contradiction? The mere omission to state a particular fact in the Police statement by itself, should never be held as amounting to contradiction for the purpose of Section 145 of the Evidence Act, and as being by itself, a sufficient ground for disbelieving the testimony of the witness as given in the Court, unless such omission can be treated as amount to contradiction in accordance with the principle laid down by the Supreme Court in Tahsildar Singh and anr. Vs. State of Uttar Pradesh, reported in AIR 1959 SC 1012.

44. The Explanation to Section 161 of the Criminal Procedure

Code states that an omission to state a fact or circumstance in the statement made to the Police may amount to contradiction, if the same appears to be significant and otherwise relevant, having regard to the context in which such omission occurs, and whether any omission amounts to a contradiction in the particular context shall be a question of fact. It is, therefore, for the Court to decide whether the omission in the statement of the mother of the deceased about the phone call received on 4th September, before the Police was significant enough for the Court to disbelieve that the deceased was harassed in connection with the demand for dowry. Considering the evidence of the P.W 13 and the P.W 14 in its entirety, we are of the view that the omission in the Police statement of the P.W 13, i.e. the mother of the deceased, regarding the phone call received by her of the deceased on 4th September, will not render the entire evidence doubtful in any manner.

45. In the aforesaid context, we may quote with profit the observations made by the Supreme Court in the case of Shashidhar Purandhar Hegde and anr. Vs. State of Karnataka (2004) 12 SCC 492.

> "*12. The word "contradiction" is of a wide connotation which takes within its ambit all material omissions and under the circumstances of a case, a Court can decide under the circumstances of a case, a Court can decide whether there is one such omission as to amount to contradiction. (See State of Maharashtra v. Bharat Chaganlal Raghani, (2001) 9 SCC 1 : (AIR 2002 SC 409 : 2002 Cri LJ 944) and Rajkishore Jha v. State of Bihar (2003) 11 SCC 519 : (AIR 2003 SC 4664 : 2003 Cri LJ 5040). The explanation to Section 162 of the Code of Criminal Procedure, 1973 (in short "the Code") is relevant. "Contradiction" means the setting of one*

*statement against another and not the setting up of a statement against nothing at all. As noted in Talsidar Singh v. State of U. P., AIR 1959 Cri LJ 1231 : (1959 Cri LJ 1231), all omissions are not contradictions. As the explanation to Section 162 of the Code shows, an omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant or otherwise relevant having regard to the context in which the omission occurs. The provision itself makes it clear that whether any omission amounts to contradiction in the particular context is a question of fact.*"

46. We may also quote with profit the decision of the Supreme Court in the case of Laxman and ors. Vs. State of Maharashtra, reported in 1974 Criminal Law Journal 369, wherein the Supreme Court observed as under:-

*10. It may not be out of place to mention here that the 11th Report of the Criminal Law Revision Committee in England, has recommended the abrogation of several artificial rules of evidence which may result in the exclusion of what is logically relevant (See : Criminal Law Review, June, 1973, p. 329). So far as our law goes,we do not think that S. 145 of the Evidence Act, on the very reasoning of Tahsildar Singh's case AIR 1959 SC 1012 : (1959 Cri LJ 1231) (supra), cited by the High Court, was intended to exclude from evidence what is relevant and admitted, and, therefore, a proved omission from having its due effect in the assessment of probabilities. Section 145, Evidence Act applies only to 'contradictions'. If there are omissions in previous statements which do not amount to contradictions but throw some doubt on the veracity of what was omitted, the uncertainty or doubt may be capable of removal by questions in re-examination. There were no such questions put to Sudani in the case before us. Neither proof nor use of such omissions from omissions (sic) which do not amount to contradictions is barred by S. 145 Evidence Act.*

*11. It is not possible to lay down a general rule as to what effect a particular omission from a previous statement should have on the probative value of what*

*was so omitted by a witness. The effect will depend upon the totality of proved facts and circumstances in which the omission might have taken place. It will often be determined by the importance of what was omitted. Our enacted law of evidence contains nothing more than Sections 3 and 114 of, the Evidence Act to indicate and illustrate the standards and methods employed in assessing the evidence.The error the High Court had committed in the case before us was that it entirely excluded very important, relevant, and material omissions, from duly proved previous statements of the witness Sudam from consideration altogether as though they were quite irrelevant and inconsequential.*"

47. We should be mindful of the condition of the mother and the other family members of the deceased prevailing at the time when their statements must have been recorded by the Police. The mental condition of the mother of the deceased having lost a young daughter with two minor children within four years of her marriage must have been traumatic and it is difficult to describe the same in words. Even if there is contradiction of statement of witness on any material point, that is no ground to reject the whole of the testimony of such a witness.

48. The above takes us to deal with the contention raised by Mr. Barot, the learned Advocate appearing for the accused-appellants as regards the conviction of the accused persons of the offence under Section 306 of the IPC. Such contention of Mr. Barot has been directly answered by the Supreme Court in the case of Bhupendra Vs. State of M.P, reported in 2014 2 SCC 106. The Supreme Court while dealing with the issue of mutual exclusivity of Sections 304-B and 306 IPC observed thus:-

"***Mutual exclusivity of Sections 304-B and 306 IPC***

***27.*** *The second contention is also without any substance. In Satvir Singh v. State of Punjab[8] this Court drew a distinction between Section 306 IPC and Section 304-B IPC in the following words: (SCC pp. 641-42, para 16)*

*"16. ... Section 306 IPC when read with Section 113-A of the Evidence Act has only enabled the court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in Section 498-A IPC) if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the cruelty or harassment was caused 'soon before her death' or earlier. If it was caused 'soon before her death' the special provision in Section 304-B IPC would be invocable, otherwise resort can be made to Section 306 IPC."*

***28.*** *It was held that Section 306 IPC is wide enough to take care of an offence under Section 304-B also. However, an offence under Section 304-B IPC has been made a far more serious offence with imposition of a minimum period of seven years' imprisonment with the sentence going up to imprisonment for life. Considering the gravity of the offence it is treated separately from an offence punishable under Section 306 IPC. On this basis, this Court in Satvir Singh[8] (SCC p. 642, para 18) rejected the contention that if a dowry related death is a case of suicide it would not fall within the purview of Section 304-B IPC at all. Reliance in this regard was placed on Shanti v. State of Haryana[9] and Kans Raj v. State of Punjab[10] wherein this Court held that a suicide is one of the modes of death falling within the ambit of Section 304-B IPC.*

***29.*** *In Shanti[9] this Court was concerned with a death that had occurred "otherwise than under normal circumstances" as mentioned in Section 304-B IPC. It was held that an unnatural dowry death, whether homicidal or suicidal, would attract Section 304-B IPC. This expression was also considered in Kans Raj[10] wherein it*

*was held that it would mean death, not in the normal course, but apparently under suspicious circumstances, if not caused by burns or bodily injury. In Kans Raj[10] the conviction of the husband of the deceased was upheld both for the offences punishable under Section 304-B IPC and Section 306 IPC also.*

***30.*** *We are, therefore, of the opinion that Section 306 IPC is much broader in its application and takes within its fold one aspect of Section 304-B IPC. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on Section 304-B IPC, it will necessarily attract Section 306 IPC. However, the converse is not true.*"

49. We shall now look into the decisions of the Supreme Court relied upon by Mr. Barot, the learned advocate appearing on behalf of the accused-appellants in support of his submissions.

(a) In Modinsab Kasimsab Kanchagar *(supra)*, the appellant was charged of the offence under Sections 498-A and 304-B read with Section 34 of the Indian Penal Code as well as Sections-3, 4 and 6 of the Dowry Prohibition Act read with Section 34 of the Indian Penal Code. The trial Court acquitted the appellant of all the charges. The State of Karnataka filed Criminal Appeal before the High Court and the High Court reversed the order of the trial Court so far as the appellant was concerned and convicted the appellant for the offence punishable under Sections 498-A, 304-B of the Indian Penal Code and Sections 3, 4 and 6 of the Dowry Prohibition Act and sentenced him to undergo simple imprisonment for a period of 7 years for the offence punishable under Section 304-B of the Indian Penal Code. Accordingly the

matter reached to the Supreme Court. In the said case the appellant was married to one Rajvi. She committed suicide. The prosecution case was that at the time of marriage of the appellant with the deceased Rs.1000/- in cash and one tola of gold was given to the appellant and thereafter the appellant harassed the deceased further for more dowry of Rs.10,000/- and the deceased informed about such harassment to her mother. Thereafter, the mother of the deceased was able to give Rs.2,000/- towards the demand, but was unable to pay the balance amount of Rs.8,000/-. The deceased had come along with the appellant to her mother's place and when the appellant was told that her family had no capacity to meet with the balance demand of Rs.8,000/-, the deceased went back to her matrimonial house weeping and saying that her life would not be safe. The deceased came back again to her mother's place and complained of harassment and once again asked for the balance amount of Rs.8,000/-, but the same was not paid to her by her mother and within 15 days thereof the deceased committed suicide.

In the facts of that case, the Supreme Court took the view that the High Court, while reversing the order of acquittal passed by the trial Court and convicting the appellant for the offence under Section 304-B of the Indian Penal Code had lost sight of an important fact that the demand of Rs.10,000/- was not towards dowry, but for payment of a society loan. The Supreme Court took the view relying on the decision in the case of Appasaheb *(supra)* that the amount of Rs.10,000/-

demanded by the appellant through the deceased for repayment of society loan of the appellant had no connection with the marriage of the appellant and the deceased. The Supreme Court held that even if there was demand of Rs.10,000/- by the appellant, it was not a demand in connection with the dowry and the offence under Section 304-B of the Indian Penal Code was not attracted. However, the Supreme Court held that the appellant was liable for the offence under Section 498-A of the Indian Penal Code.

We have already discussed the decision of the Supreme Court delivered in the case of Appasaheb *(supra)*. In the subsequent decisions of the Supreme Court referred to above, Appasaheb has been explained. In our opinion this decision of the Supreme Court relied upon on behalf of the accused appellants is of no assistance for the same reason we assigned while dealing with case of Appasaheb (*supra)*.

b) In Suresh Kumar Singh *(supra)*, the application of the term “soon before her death” occurring in Section 304-B of the Indian Penal Code fell for the consideration of the Supreme Court. In the said case Asha Devi (the deceased) was married to the appellant. Asha Devi was found dead having suffered extensive burn injuries. The brother of the deceased lodged a first information report *inter alia* alleging that the appellant had demanded Rs.5,000/- at the time of marriage of his sister. The money was paid to the appellant. Thereafter the demand for more money, ring and chain was made and

in that regard she was burnt, a year ago. In the facts of that case, the Supreme Court observed that from the evidence of the P.W.1 it appeared that he had talked of only one incident in respect whereof his evidence was admissible in law, i.e. when the deceased had come back to her parental home six months after the “Gauna” ceremony. At that time the deceased had informed him that if he did not give a ring and a chain, the accused persons might kill her. The Supreme Court further took notice of the fact that it was not in dispute that the matter rested at that stage as he had a talk with the appellant in that behalf where after the appellant came and took the deceased along with him. The matter was, therefore, settled. The Supreme Court observed in its judgment that there was nothing to show that any cruelty or harassment was caused on that ground thereafter. It is in the aforementioned context that the Supreme Court considered the effect of the term “soon before her death” which is one of the important ingredients to constitute the offence of dowry death punishable under Section 304-B of the Indian Penal Code. The Supreme Court observed in para-12 that some harassment which had taken place one year prior to the death without something more, could not have been considered to be a cruelty which had been inflicted soon before the death of the deceased. The Supreme Court took the view that it did not satisfy the proximity test. The Supreme Court also observed that cruelty having not been inflicted upon the deceased soon before her death, neither the presumption in terms of Section 113-B of the Indian Evidence Act could have been drawn,

nor it could have been concluded that the appellant was guilty of the commission of the offence under Section 304-B of the Indian Penal Code.

This decision of the Supreme Court is of no assistance to the accused-appellants of the case at hand. The most important distinguishing features are two fold. First, there was evidence that a settlement had taken place between the accused and the family members of the deceased as a result the test of proximity failed and secondly, the death had not taken place within a period of 7 years and there was no evidence that any cruelty had been inflicted upon the deceased soon before her death. The presumption in terms of Section 113-B of the Indian Evidence Act was also not available to the prosecution. In the present case as discussed above, the harassment continued till the last and the death of the deceased also took place within four years from the date of her marriage with the accused no.1.

c) In Kaliya Perumal *(supra)*, the appellants were found guilty of the offences punishable under Sections 304-B and 498-A of the Indian Penal Code by the trial Court and the appeal before the High Court also failed. The marriage between the deceased and her husband Ashokkumar was solemnized on 27th January, 1989. At the time of the marriage, it was a condition stipulated by the accused persons that along with other articles, 15 sovereign of jewels and a cash of Rs.10,000/- was to be paid. Although the parents of the deceased had agreed

to meet the demands, yet they were able to arrange for only 10 sovereign of jewels and cash of Rs.7,000/- and the same was given to the accused persons at the time of marriage. The parents of the deceased had agreed to give the balance as early as was practicable. The husband of the deceased was working abroad. Whenever he used to leave India, he used to take his wife and leave her with her parents. Since the balance jewellery and cash were not given as agreed, the accused persons continued to make demand therefor. The deceased was insulted, humiliated and tortured. Unable to bear the harassment at the hands of the husband and her family members, the deceased committed suicide. Before the Supreme Court, the contention on behalf of the appellants was that Section 304-B had no application because there was no evidence to show that soon before the deceased committed suicide, there was any cruelty or torture. The Supreme Court, in para-6 of its judgment observed that the expression “soon before her death” used in the substantive Section 304-B of the Indian Penal Code and Section 113-B of the Indian Evidence Act was present with the idea of proximity test. No definite period has been observed and that the determination of the period which can come within the term “soon before” was left to be determined by the Courts, depending upon the facts and circumstances of each case. The Court further observed that the expression “soon before” would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question.

This decision of the Supreme Court is also of no assistance to the accused-appellants as we have already discussed at length that there is evidence on record to indicate that the harassment to the deceased at the hands of both the accused persons continued till the last. In the case at hand having regard to the evidence on record, it could not be said that the incidents of cruelty were remote in time and had become stale enough not to disturb the mental equilibrium of the deceased.

d) In Bakshih Ram *(supra)* the marriage of the deceased with Bakshih Ram was solemnized 1½ year prior to the incident in question. The appellants before the Supreme Court, were convicted by the trial Court of the offence punishable under Sections 304-B and 498-A of the Indian Penal Code and the appeal to the High Court had also failed. On the basis of the materials on record, the Supreme Court took notice of the fact that in the marriage span of 1 ½ year no incident of cruelty, maltreatment and harassment relating to the dowry was alleged against the appellants except the incident of just one day prior to the date of occurrence. The Court observed in the facts of that case that if the mother of the deceased had come across any such harassment or ill-treatment, it was but natural that she could have explained the same in her evidence. Admittedly, as observed by the Supreme Court, the mother of the deceased had neither asserted nor narrated any complaint from her daughter about harassment or ill-

treatment by the appellants. The Supreme Court also took notice of an important fact that the demands made by the appellants were already met by the parents of the deceased and, therefore, there was no reason for them to set the deceased on fire. In such circumstances, the Supreme Court took the view that the ingredients of Section 304-B of the Indian Penal Code were not met by the prosecution for holding the appellants guilty under the said offence.

The Supreme Court also took notice of the fact that the prosecution had placed reliance only on the evidence of the mother of the deceased which was in the nature of hearsay and was very general and vague. There was no evidence even to suggest that there was any cruelty or harassment soon before the occurrence.

The aforesaid decision of the Supreme Court is also of no assistance to the accused appellants as in the present case the parents of the deceased were unable to meet with the demands of the accused persons and there is cogent evidence of harassment as deposed by the brother, father, mother and the two friends of the deceased.

e) In Bharat Bhushan (*supra*), the deceased was married to the appellant no.1 on 10th June, 2003. The deceased thereafter came to the house of her parents on 5th August, 2003. In the house of her parents she committed suicide by hanging to the ceiling on 17th August, 2003. The father of the deceased lodged a

report with the police on 17th August, 2003 stating that he had brought his daughter to the house on 5th August, 2003 and she was not sent back to her in-laws's house on account of the illness of his wife and she committed suicide. The police investigated the case and filed a charge-sheet against the appellants under Sections 304-B and 498-A of the Indian Penal Code. The trial Court convicted the appellants and the High Court also maintained the conviction. The trial Court held on the basis of the evidence led by the prosecution witnesses, that the appellants nos.2 and 4 along with the appellant no.1 demanded a colour Television, Rs.50,000/- in cash and a Hero Honda Motorcycle towards dowry at the time of marriage and just after one day after the marriage, had not even supplied a proper meal to the deceased. In the facts of that case, the Supreme Court took the view that the criminal law under Section 304-B of the Indian Penal Code would be attracted not just by demand of dowry but by act of cruelty or harassment by husband or any relative of her husband in connection with such demand. It held that unless such an act of cruelty or harassment was proved to have been caused by the accused to the deceased soon before her death in connection with the demand of dowry, the accused cannot be held to be liable for offence of dowry death under Section 304-B of the Indian Penal Code. The Court, on the basis of the materials on record observed that the deceased had committed suicide while she was at the house of her parents. There may have been demand of dowry by the appellants at the time of marriage and it was quite possible that the demand of

dowry might have persisted even after marriage, but unless it was established that the appellants committed some act of cruelty or harassment towards the woman they could not have been held guilty of the offence under sections 304-B and 498-A of the Indian Penal Code. The Supreme Court took the view that the act of remaining silent with regard to the settlement of dowry demand would also not amount to cruelty.

The aforesaid decision of the Supreme Court is also of no assistance to the accused appellants. The same was rendered in the facts of that case. In the case at hand, it is not only established that there was a demand of Rs.2 lac but as the deceased was unable to make good the demand there was harassment at the end of the accused persons which ultimately compelled the deceased to commit suicide.

f) In Panchanand Mandalal (*supra*), the appellants were convicted by the trial Court of the offence under Section 304-B read with Section 34 of the Indian Penal Code and the imprisonment for life imposed by the trial Court was upheld by the High Court. The facts of the said case were that the marriage of deceased was solemnized with the accused Kaleshwar Mandal about 5 years prior to her death. The brother of the deceased received information that his sister had suffered burns and was admitted in the Giridi Sadar Hospital for treatment. The brother along with other members of his family reached the hospital and found that the deceased had been badly burnt with fire. The whole body of the deceased

had sustained burns. After regaining consciousness the deceased informed her brother that on the date of the incident while she was baking bread in the kitchen of her in-laws' house, her father-in-law, mother-in-law and his two sons came over there. She further stated that her father-in-law poured kerosene oil on her head from a tin and her mother-in-law set fire to her sari with a burning wood stating that she had not brought a cow and a golden ring in dowry. The elder brother-in-law of the deceased and the younger brother-in-law took out knives and threatened her that if she would raise shouts, she would be killed. On the basis of the dying declaration and the statements of the brother and other family members of the deceased, the trial Court held the charges under Section 304-B read with Section 34 of the Indian Penal Code proved. The Supreme Court, on overall appreciation of the evidence on record, found that ominous allegations had been made against the in-laws of the deceased. No specific incident had been stated by the mother of the deceased or the brother of the deceased in their statements. Nothing was on the record to suggest that the deceased was subjected to cruelty and hence "soon before her death" and "in connection with demand of dowry". The Supreme Court found that practically there was no evidence to prove that there was any cruelty or harassment for or in connection with the demand of dowry soon before the death of the deceased. Moreover, the deceased had not made any statement in her dying declaration indicating the demand of dowry. The Supreme Court in such circumstances took the view that the defence had

successfully created a valid doubt as to the authenticity of the dying declaration as the Police Officer who recorded the same was also not examined. The Court further observed that such deficiency in the evidence could prove fatal to the prosecution as evidence of cruelty and harassment in general was not sufficient to attract Section 304-B of the Indian Penal Code.

The aforesaid decision of the Supreme Court is also of no assistance to the accused persons herein. There are three distinguishable features so far as the afore noted decision is concerned. First, there was a dying declaration of the deceased and the dying declaration was silent so far as the demand of dowry was concerned. Secondly, the dying declaration itself was found to be suffering from various infirmities. Thirdly, the Officer who had recorded the dying declaration was not examined, which according to the Supreme Court was quite fatal for the prosecution case. Fourthly, the allegations leveled by the mother of the deceased and the brother of the deceased were quite ominous in nature and fifthly, there was nothing on the record to suggest that the deceased was subjected to cruelty and harassment “soon before her death” and “in connection with the demand of the dowry”. In the case at hand, there is enough evidence to show that there was a demand of Rs.2 lac which could not be fulfilled by the parents of the deceased and for such reason the deceased was harassed and such harassment continued till the last.

g) In Durga Prasad (*supra*), the appellants were convicted

by the trial Court under Sections 498-A and 304-B of the Indian Penal Code. The appeal before the High Court of Madhya Pradesh also failed. The case of the prosecution was that the accused person had caused the death of Kripabai (the deceased) by torturing her physically and mentally so as to drive the deceased to commit suicide. The Supreme Court, on overall appreciation of the evidence available in that case, observed that except for certain bald statements made by the two witnesses alleging that the victim had been subjected to cruelty and harassment prior to her death, there was no other evidence to prove that the victim had committed suicide on account of cruelty and harassment to which she was subjected to just prior to her death. The Supreme Court held that in such circumstances the ingredients of the evidence to be led in respect of Section 113 –B of the Indian Evidence Act in order to bring home the guilt against the accused under Section 304-B of the Indian Penal Code were lacking. The Court took notice of the fact that no charges were framed against the appellants under the provisions of the Dowry Prohibition Act, 1961 and the evidence led in order to prove the same for the purposes of Section 304-B of the Indian Penal Code was related to a demand for a fan only. Taking into consideration the nature of the demand and also the fact that there were no charges against the appellants under the provisions of the Dowry Prohibition Act, 1961, the Supreme Court held that no case could be said to have been made-out for conviction under Section 498-A and 304-B of the Indian Penal Code.

The aforesaid decision of the Supreme Court is also of no assistance to the accused persons herein. In the case at hand the demand was for Rs.2 lac and the accused persons have been charged and convicted under the provisions of the Dowry Prohibition Act, 1961.

h) In Hira Lal & others (*supra*) the deceased committed suicide by consuming poison. She was married to one Surinder on 26th November, 1995. The other appellants before the Supreme Court were the father-in-law and mother-in-law respectively of the deceased. The family members of the deceased alleged that she was subjected to torture for dowry and that had led her to commit suicide. On completion of the investigation, charge-sheet was filed for the alleged commission of offence punishable under Sections 304-B and 498-A of the Indian Penal Code. The trial Court found the appellants guilty under Sections 304-B and 498-A read with Section 34 of the Indian Penal Code. The matter was carried in an Appeal before the Delhi High Court. The High Court reduced the sentence to 3 years R.I. instead of 10 years R.I. in respect of the father-in-law and the mother-in-law of the deceased considering their old age. In case of Surinder, the husband of the deceased, the sentence was reduced to 7 years in respect of Section 304-B of the Indian Penal Code while for the offence under Section 498-A of the Indian Penal Code, the sentence was maintained. The Supreme Court took notice of the fact that the prosecution witnesses had accepted that there was no demand for any

valuable articles at any point subsequent to the marriage in case of Manju. If the demand was made for deceased as alleged, there was no reason as to why a departure was made in case of her sister. The Supreme Court also took notice of the fact that before the alleged suicide, there were differences between the deceased and her husband for which allegations were made with the police. Finally, the difference was resolved by settling that they shall stay separately from other members of the family. There was a conciliation made by the officials and the conditions indicated related to a separate residence. There was not even an inkling about demand of money or articles and such fact had been categorically accepted by both P.Ws.10 and 11. In such circumstances, the Supreme Court took the view that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. On the basis of the evidence on record, the Court held that there was no definite evidence about ill-treatment to the deceased at any time having immediate proximity to the death of the deceased on 14th April, 1999. Therefore, according to the Supreme Court the basic requirement of cruelty or harassment soon before the death to bring the application of Section 304-B of the Indian Penal Code was absent.

The aforesaid decision of the Supreme Court is also of no assistance as one of the most important distinguishing features is that in the case before the Supreme Court there was a settlement arrived at between the deceased and the family members of the husband and pursuant to

the same, they decided to reside separately. There was no evidence of cruelty or harassment and, therefore, in such circumstances the Supreme Court took the view that it was very difficult to maintain the conviction of the accused persons for the offence punishable under Section 304-B of the Indian Penal Code. Such is not the position so far as the case at hand is concerned.

Once again at the cost of repetition we reiterate that there is enough evidence on record to suggest that there was persistent demand by the accused persons for Rs.2 lac from the deceased and her parents and as the deceased was unable to fulfill the demand, there was incessant harassment which ultimately forced the deceased to take the extreme step of committing suicide and that too at a stage when her two children were just aged 2 years and 7 months respectively.

50. For the foregoing reasons, we have reached to the conclusion that the prosecution has been able to prove the guilt of the accused-appellants beyond reasonable doubt and the trial Court committed no error in finding them guilty of the offence.

51. In the result, the appeal fails and is hereby dismissed. As both the accused appellants are on bail pending this appeal, their bail bonds are cancelled. The accused appellants are directed to surrender before the jail authority within a period of four weeks from today without fail, to serve out the remaining sentence.

**(BHASKAR BHATTACHARYA, C.J.)**

**(J.B.PARDIWALA, J.)**

Mohandas